

Government of the District of Columbia

ZONING COMMISSION



Z.C. ORDER NO.639
Case No. 88-29C
(Planned Unit Development and
Map Amendment at
5th Street and Massachusetts Avenue, N.W.)
January 8, and February 12, 1990

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on February 16 and 23, 1989, to consider the application of Massachusetts Crescent Limited Partnership for approval of a planned unit development, and a related change in zoning from HR/SP-2 to HR/C-3-C. The public hearing was conducted in accordance with the contested case provisions of 11 DCMR 3022.

1. Applicant requests approval of a consolidated planned unit development ("PUD") and change in zoning from HR/SP-2 to HR/C-3-C.
2. The site of the application is Lots 875 and 876, in Square 517, located at the southeast corner of the intersection of 5th Street and Massachusetts Avenue, N.W.
3. As presently before the Commission, the applicant proposes to provide 120 housing units with a floor area ratio ("FAR") of 2.58, a commercial FAR of 5.92, and a total FAR of 8.5, resulting in a structure containing approximately 381,000 square feet of gross floor area. The applicant proposes to devote approximately 253,000 square feet to offices, 12,250 square feet to residentially supporting retail uses, and 107,600 square feet to housing. The site will also provide underground parking for 185 cars with the entrance off of the alley on the south side of the building.
4. The PUD site is within the Judiciary Square area that is addressed in Sections 967 and 968 of the Comprehensive Plan. The site is presently used as a surface parking lot, and encompasses an area of 44,827 square feet.

5. The applicant has submitted a request for an amendment to the Zoning Map to change the zoning from HR/SP-2 to HR/C-3-C to develop a project with a height of 130 feet and a floor area ratio of 8.5. The subject site has previously received Zoning Commission approval for a PUD, with a rezoning from HR/SP-2 to HR/C-3-C (Zoning Commission Order Nos. 369, 399, 449 and 507). The previously approved PUD was for a mixed-use office and hotel project, with no residential housing.
6. Under the current zoning, HR/SP-2, development to medium high density is permitted. The maximum FAR of the district is 6.0. The entire 6.0 FAR can be used for apartment or residential use, but only 3.5 FAR is permitted for other uses.
7. The C-3-C District, which the applicant proposes, permits development to medium/high proportions and allows office, retail, housing and mixed use development. C-3-C permits a maximum FAR of 6.5 for all uses with a maximum height of 90 feet and a lot occupancy of 100 percent.
8. The Generalized Land Use Element Map of the Comprehensive Plan shows the area of the subject PUD as within an area designated for mixed-use high density commercial and high density residential uses. Pursuant to the condition that are set forth in this Order, the proposed mixed-use development is consistent with the goals and policies established in the Land Use Element of the Plan.
9. The zoning pattern in the area includes: in the immediate area, in all directions, HR/SP-2; further to the west, HR/R-5-D and HR/C-3-C Districts; further to the south and east, an extension of the HR/SP-2 District; and to the north and northeast, an HR/C-2-C District.
10. The site abuts a 20-foot-wide public alley on the south and east, which connects Massachusetts Avenue and 5th Street. The site is paved and used as a parking lot with access from Massachusetts.
11. The proposed project would have a maximum building height of 130 feet.
12. The Applicant, through testimony presented at the public hearing, submitted that the primary purposes of the project are to provide a vital mixed-use development project providing privately subsidized housing in presently underutilized areas of Downtown. To achieve these purposes, the Applicant submitted that

the proposed PUD has been carefully designed to achieve the following basic objectives:

- (a) Provide a mixed-use building of superior architectural design that will stimulate future development of the Downtown and complement the character of the neighborhood;
- (b) Ensure the development of 120 new housing units at 5th and Massachusetts Avenue, consistent with the Comprehensive Plan and the City's goal of creating housing in the Downtown area, including the area south of Massachusetts Avenue;
- (c) Provide subsidized below-market-rent neighborhood retail and service establishments, including a drug store;
- (d) Convert an underutilized surface parking lot at an important Massachusetts Avenue location into an asset that will make a far greater contribution to the immediate Downtown area and to the City;
- (e) Provide an ideal development of appropriate use and density for such a prime location, consistent with the goals and objectives of the Comprehensive Plan, including the Downtown Plan;
- (f) Enhance the character of the neighborhood and stabilize property values;
- (g) Provide a project that will facilitate the use of mass transit;
- (h) Design the project in a manner that will prevent any adverse impact on existing traffic conditions, through a careful analysis of those conditions and the potential traffic and parking impact of the proposed development; and
- (i) Maximize the achievement of the PUD goals by providing benefits that would not occur under a matter-of-right project.

13. The Applicant submitted the following as special amenities that the PUD would provide within the project:

- (a) A superbly designed mixed-use building in an important location in the Downtown area, consistent with the Comprehensive Plan.
- (b) A significant amount of new housing (120 units) in the Downtown area through the construction of

housing south of Massachusetts Avenue. This commitment to provide housing will address the City's interest in promoting housing in the Downtown area;

- (c) A substantial amount of new housing without the necessity of any public subsidies or other funds of the District of Columbia, with all required subsidies being privately provided;
- (d) Replacement of an existing surface parking lot with a well-designed mixed-use building, containing parking for 191 motor vehicles, including 10 handicap, 10 van, 76 compact, and 65 regular spaces;
- (e) A commitment to seek service-oriented retail establishments as tenants, including the establishment of a drug store, to offer incentives to these businesses to locate in the new building, and to work with the community to insure that every effort is made to meet the neighborhood's retail needs;
- (f) A transportation management plan, involving a coordinated strategy to encourage the use of mass transportation and to reduce the traffic impact of the project on the neighborhood streets;
- (g) Improvements to public space surrounding the building;
- (h) A structure that will stand as a strategic critical mass to ensure future development in the Downtown area, consistent with the Comprehensive Plan, particularly the Downtown element; and
- (i) Economic benefits to the City and to City residents through:
 - (1) Increased real estate tax revenues;
 - (2) Commitment to jobs for minorities in the construction of the project through agreements with the Minority Business Opportunities Commission; and
 - (3) First source employment for construction jobs.

13. It is evident that at this time the financial feasibility of a matter-of-right project at the site may be problematic, and this circumstance is not without relevance to the consideration of this application, but

the Commission is persuaded that this centrally-located site does have substantial value, as well as potential for substantially increased value, for residential use.

14. The District of Columbia Office of Planning, by report dated February 9, 1989, recommended that the application be denied. The OP report stated that the project needed a stronger residential component than is presently provided. OP noted that a residential FAR of 4.0 should be the minimum goal in the project, and cited a 40 percent residential component as meeting a reasonable definition of a mixed use project. OP was also concerned that the applicant would have the ability to provide general office space, rather than SP office space, if the map amendment were granted. At the public hearing, OP took the position that it would not then support nor oppose the project. It noted that it had not reached a conclusion with which it was comfortable, and that further negotiations with the applicant were necessary. OP expressed concern that the Applicant's introduction of large commercial office uses to the area would arguably establish the area as commercial in nature, thus precluding future residential growth in the area. Such a situation would violate the Comprehensive Plan, which calls for mixed uses in the area. Although OP agreed with Applicant's land appraiser that the economics of housing in the area do not now work, OP observed that the project must be viewed from a planning perspective, not simply on the basis of the developer's perspective, through which a "highest and best use" is primarily market driven.
15. By comments submitted on February 3, 1989, Advisory Neighborhood Commission ("ANC") 2C expressed the following issues and concerns:
 - (a) The PUD application has significant advantages for the community because of the contribution of a critical mass of housing that would support additional retail and service providers in the community; and
 - (b) A drug store is a critically needed retail use in the area, and should be required; such a requirement is a condition to the support of ANC 2C.
16. Except for reservations that the Commission retains about the height of the project, the revised design, as submitted on April 28, 1989, is of high quality.
17. The Commission finds that the principal amenities to be supplied are the support for housing, and the retail uses, including a potential drug store, and that these amenities, together with the commitment to minority

business opportunities and construction jobs for District of Columbia residents, merit approval of the application.

18. The central practical issue that is before the Commission is whether to approve a moderate level of increased housing in this area at present, or to adhere to the Comprehensive Plan goal of greater, truly high-density housing, which may only be realized at a later time.

CONCLUSIONS OF LAW

1. As presently before the Commission, the proposed PUD satisfies the criteria of 11 DCMR, Chapter 24.
2. Although the goals and policies of the Comprehensive Plan that apply to the PUD site are not by their nature transferable to other sites, those goals and policies do support the residential/non-residential FAR mix that Applicant proposes for the site.
3. Although the off-site development of residential units would not itself contribute to the goals and policies that the Council has established for high density residential development within the area that includes the PUD site, such financial support of off-site housing is an appropriate public benefit in the context of a PUD that is otherwise consistent with the Comprehensive Plan.
4. The proposed number of on-site dwelling units would reasonably advance the goals and policies of the Comprehensive Plan.
5. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.
6. The development of this PUD carries out the purposes of Article 75 to encourage the development of well-planned residential, institutional, commercial and mixed-planned residential, institutional, commercial and mixed-use developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
7. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.
8. The approval of this application is not inconsistent

with the Comprehensive Plan of the District of Columbia.

9. The approval of this application is consistent with the purposes of the Zoning Act.
10. The application can be approved with conditions that ensure that the development will not have an adverse effect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
11. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District.
12. The Zoning Commission has accorded to the Advisory Neighborhood Commission (ANC) 2C the "great weight" to which it is entitled.
13. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, as amended.

DECISION

1. In consideration of the foregoing findings of fact and conclusions of law herein, the Zoning Commission for the District of Columbia hereby orders approval of this application for consolidated review of a Planned Unit Development and a change of zoning of Lots 875 and 876 in Square 517 from HR/SP-2 to HR/C-3-C, subject to the following guidelines, conditions, and standards.
2. The PUD shall be developed in accordance with the plans prepared by AEPA Architects Engineers, P.C., and HOK Architects, P.C. marked as Exhibits No. 57 and 58 of the record, as modified by the guidelines, conditions, and standards of this Order.
3. The PUD shall be developed as a mixed-use project consisting of a residential component, a general office component, and a retail component. The project shall have 120 residential units.
4. The FAR of the project shall not exceed 8.5.
5. The height of the building at the corner of Massachusetts Avenue and 5th Street shall be 130 feet. Setbacks at 110 feet shall be 1:1 on the Massachusetts Avenue front, and 1:2 on the sides, and as shown on Exhibit 57-A15.

6. The total lot occupancy of the project shall not exceed 80 percent of the site.
7. The applicant shall provide a minimum of 191 parking spaces.
8. The project shall provide the amenities proposed as part of this application and described in detail in the findings and record of this case, as follows:
 - (a) The applicant shall construct a well-designed mixed-use building in an important location in the Downtown area, consistent with the Comprehensive Plan;
 - (b) The project shall include 120 new housing units;
 - (c) The applicant shall provide housing units without the necessity of any public subsidies or other funds of the District of Columbia. All required subsidies shall be privately provided.
 - (d) The applicant shall seek service-oriented retail establishments as tenants of the PUD, including the establishment of a drug store, and shall offer incentives to these businesses to locate in the new building. In working with the community, the applicant shall insure that every effort is made to meet the neighborhood retail needs;
 - (e) Subject to the approval by the Department of Public Works, the applicant shall prepare a transportation management plan, involving a coordinated strategy to reduce the traffic impact of the PUD on the neighborhood streets and to encourage use of mass transportation;
 - (f) Subject to the approval by the Department of Public Works, the applicant shall ensure improvements to public space surrounding the building;
 - (g) The applicants shall provide economic benefits to the City and to its residents through:
 - (1) Commitment to jobs for minorities in the construction of the project through agreement with the Minority Business Opportunities Commission; and
 - (2) First source employment for construction jobs.

- (h) The Applicant shall participate in the Tenant Assistance Program (TAP) by setting aside 20 percent of the units for participation in TAP;
 - (i) The PUD shall include retail uses, including a drug store;
 - (j) The applicant shall rehabilitate 120 dwelling units, as designated by DHCD, off-site;
 - (k) The PUD shall provide for waste storage and collection, as per Exhibit 56(J) of the record;
 - (l) The proposal shall include retention of the streetscape, as described and shown in Exhibit 56(L); and of play area, as shown in Exhibit 58; and
 - (m) The PUD shall provide for enclosure of roof top utilities within the building envelope, but the enclosed area shall not count as the use of available gross floor area.
9. The applicants shall enter into an agreement with the National Park Service to assist in the maintenance of Reservation No. 74.
10. The facade design treatment and materials of the proposed building shall be generally consistent with the plans marked as part of Exhibit No. 57 in the record of the case, and the building materials that are shown on Exhibit No. 56(B) of the record.
11. The applicant shall have flexibility with respect to the following:
- a. Varying the location and design of all interior components, including partitions, slabs, doors, hallways columns, stairways, location of elevators, electrical and mechanical rooms, provided that the variations do not change the exterior configuration of the building, including the penthouse.
 - b. Making minor adjustments in the facade and window size and detailing, provided that the applicant shall submit its final facade and window design to the Zoning Commission for final approval, which the Commission may determine to grant without having a further public hearing.
 - c. Varying the final selection of exterior materials within the color ranges and material types as proposed, based on availability at the time of

construction, provided that the applicant shall submit its final selection of the exterior materials to the Zoning Commission for final approval, which the Commission may determine to grant without having a further public hearing.

12. The Zoning Commission reserves the discretion to determine the proceedings by which it will consider any matter submitted to it pursuant to Paragraphs b. and c. of condition numbered 11 of this order.
13. The applicant shall comply with the Memorandum of Understanding that it has entered with the Minority Business Opportunity Commission and which provides that the applicant will make a bona fide effort to award at least thirty-five (35) percent of the construction-related contracts for the project to Certified Minority Business Enterprises.
14. The applicant shall comply with its First Source Agreement with the Department of Employment Services ("DOES") that provides that the applicant will use DOES as its first source for the recruitment, referral and placement of employees in connection with the construction of the project.
15. The PUD approval for Lots 875 and 876 in Square 517, and the change in zoning from HR/SP-2 to HR/C-3-C shall be effective upon recordation of a covenant as required by 11 DCMR 2407.3.
16. No building permit shall be issued for the site until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, and satisfactory to the Office of the Corporation Counsel and the Zoning Regulation Division of the Department of Consumer and Regulatory Affairs. The covenant shall bind the owner and all successors in title to construct on and use the property in accordance with this order, and amendments thereto, of the Zoning Commission.
17. The Zoning Secretariat shall not release the record of this case to the Zoning Regulation Division/DCRA until the applicant has filed a certified copy of the covenant in the records of the Zoning Commission.
18. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for building permit as specified in subsection 11 DCMR 2407.1. Construction shall start within three years of the effective date of this order.

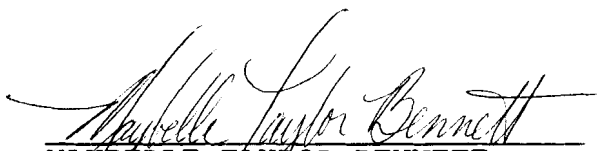
19. Pursuant to D.C. Code Sec. 1-2531 (1987), section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.


Vote of the Zoning Commission taken at the regular monthly meeting on May 8, 1989: 4-0 (John G. Parsons, Maybelle Taylor Bennett, Lloyd D. Smith and Lindsley Williams, to grant first-stage approval; Elliott Carroll, not present, not voting).

Vote of the Zoning Commission at the monthly meeting on October 16, 1989: 3-0 (John G. Parsons, Lloyd D. Smith and Maybelle Taylor Bennett to approve proposed action to approve the application as a consolidated PUD and map amendment; Tersh Boasberg and William Ensign not voting, not having participated in the case).

This order was approved by the Zoning Commission at the meeting on January 8, 1990, by a vote of 3-0 (John G. Parsons, Lloyd D. Smith, and Maybelle Taylor Bennett to approve; Tersh Boasberg and William Ensign not voting, not having participated in the case).

The order was revised and approved at the meeting on February 12, 1990, by a vote of 3-0 (John G. Parsons, Lloyd D. Smith, and Maybelle Taylor Bennett to approve; Tersh Boasberg and William Ensign not voting, not having heard the case). In accordance with the provisions of DCMR 3028, this order shall become final and effective upon publication in the D.C. Register; that is on, _____.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat